



# **Treasury Laws Amendment (2023 Measures No. 3) Act 2023**

**No. 75, 2023**

**An Act to amend the law relating to financial  
services, corporations, competition and taxation,  
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (2023 Measures No. 3) Act 2023

No. 75, 2023

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**An Act to amend the law relating to financial  
services, corporations, competition and taxation,  
and for related purposes**

*[Assented to 20 September 2023]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	20 September 2023
2. Schedule 1	The day after this Act receives the Royal Assent.	21 September 2023
3. Schedule 2, Parts 1 to 4	The day after this Act receives the Royal Assent.	21 September 2023
4. Schedule 2, Part 5, Division 1	At the same time as the provisions covered by table item 3. However, the provisions do not commence at all if Schedule 2 to the <i>Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023</i> commences at that time.	21 September 2023
5. Schedule 2, Part 5, Division 2	Immediately after the commencement of Schedule 2 to the <i>Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023</i> . However, the provisions do not commence at all if: (a) that Schedule does not commence; or (b) that Schedule commences before the commencement of the provisions covered by table item 3.	20 October 2023
6. Schedule 2, Part 5, Division 3	The later of: (a) immediately after the commencement of the provisions covered by table item 3;	20 October 2023 (paragraph (b) applies)

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	and (b) immediately after the commencement of Schedule 2 to the <i>Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
7. Schedule 2, Part 6, Division 1	At the same time as the provisions covered by table item 3.  However, the provisions do not commence at all if Part 1 of Schedule 4 to the <i>Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023</i> commences at that time.	21 September 2023
8. Schedule 2, Part 6, Division 2	Immediately after the commencement of Part 1 of Schedule 4 to the <i>Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023</i> .  However, the provisions do not commence at all if: (a) that Part does not commence; or (b) that Part commences before the commencement of the provisions covered by table item 3.	Never commenced
9. Schedule 3, Parts 1 and 2	The day after this Act receives the Royal Assent.	21 September 2023
10. Schedule 3, Part 3	The later of: (a) immediately after the provisions covered by table item 9; and (b) immediately after the commencement of Schedule 2 to the <i>Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023</i> .  However, the provisions do not commence	20 October 2023 (paragraph (b) applies)

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	at all if the event mentioned in paragraph (b) does not occur.	
11. Schedule 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Avoidance of certain product intervention orders**

### ***Corporations Act 2001***

#### **1 At the end of Part 7.9A**

Add:

#### **1023S Avoidance schemes—prohibition**

##### *General prohibition*

- (1) A person must not, either alone or with others, engage in any of the following conduct:
- (a) enter into a scheme;
  - (b) begin to carry out a scheme;
  - (c) carry out a scheme;

if, having regard to any matters as required under subsection (8), it would be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was to avoid the application of a credit product intervention order.

Note: This subsection is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

##### *Constitutional corporations*

- (2) A constitutional corporation must not, either alone or with others, engage in any of the following conduct:
- (a) enter into a scheme;
  - (b) begin to carry out a scheme;
  - (c) carry out a scheme;

if, having regard to any matters as required under subsection (8), it would be reasonable to conclude that the purpose, or one of the purposes, of the constitutional corporation engaging in that conduct was to avoid the application of a credit product intervention order.

Note: This subsection is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

*Constitutional trade and commerce*

- (3) A person must not in the course of constitutional trade and commerce, either alone or with others, engage in any of the following conduct:

- (a) enter into a scheme;
- (b) begin to carry out a scheme;
- (c) carry out a scheme;

if, having regard to any matters as required under subsection (8), it would be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was to avoid the application of a credit product intervention order.

Note: This subsection is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

*Use of communications service*

- (4) A person must not use postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution), either alone or with others, in order to engage in any of the following conduct:

- (a) enter into a scheme;
- (b) begin to carry out a scheme;
- (c) carry out a scheme;

if, having regard to any matters as required under subsection (8), it would be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was to avoid the application of a credit product intervention order.

Note: This subsection is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

*Prohibitions independent of each other*

- (5) To avoid doubt, subsections (1), (2), (3) and (4) are independent from and do not limit each other.
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- (6) If conduct constitutes a contravention of 2 or more subsections of this section, proceedings may be started against a person in relation to the contravention of any one or more of those subsections.
- (7) However, the person is not liable to more than one pecuniary penalty in relation to the same conduct.

*Matters to which regard must be had*

- (8) In determining, for the purposes of subsection (1), (2), (3) or (4), whether it would be reasonable to conclude that a purpose of a person entering into or carrying out (to any extent) a scheme was to avoid the application of a credit product intervention order, regard must be had to any matters prescribed by the regulations.
- (9) Subsection (8) does not limit the matters to which regard may be had in making a determination described in that subsection.

*Offence*

- (10) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (2), (3) or (4); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

*Definitions*

- (11) In this section:

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**constitutional trade and commerce** means trade and commerce:

- (a) between Australia and places outside Australia; or
- (b) between the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories; or
- (e) within a Territory.

**credit product intervention order** means a product intervention order made in relation to a financial product of the kind covered by

paragraph 12BAA(7)(k) of the *Australian Securities and Investments Commission Act 2001* (which is about credit facilities).

**scheme** means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise; or
- (c) any combination of 2 or more things that are schemes because of paragraph (a) or (b).

**1023T Avoidance schemes—presumption of avoidance for certain schemes in civil cases**

- (1) For the purposes of subsection 1023S(1), (2), (3) or (4), it is reasonable to conclude, unless the contrary is proved, that a person entered into or carried out a scheme for the purpose of avoiding a credit product intervention order (within the meaning of subsection 1023S(11)) if:
  - (a) the scheme is of a kind prescribed by the regulations; or
  - (b) the scheme is of a kind determined by ASIC under subsection (3).
- (2) In proving the contrary for the purposes of subsection (1), regard must be had to any matters as required under subsection 1023S(8).
- (3) ASIC may, by legislative instrument, determine a scheme, or a class of schemes, for the purposes of paragraph (1)(b).
- (4) This section does not have effect for the purposes of determining whether a person has committed an offence against subsection 1023S(10).

**1023U Avoidance schemes—exemption by ASIC**

- (1) ASIC may, by legislative instrument, exempt a scheme, or class of schemes, from all or specified provisions of section 1023S.
- (2) The exemption may apply subject to any specific conditions imposed by ASIC.

**2 In the appropriate position in the table in subsection 1317E(3)**

Insert:

subsection 1023S(1), (2), (3) or (4)	schemes for avoiding certain product intervention orders	uncategorised
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**3 In the appropriate position in Chapter 10**

Insert:

**Part 10.71—Application provisions relating to the Treasury Laws Amendment (2023 Measures No. 3) Act 2023**

**1701 Schemes for avoiding certain product intervention orders**

Section 1023S, as inserted by Schedule 1 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023* applies in relation to conduct that is engaged in on or after the commencement of that section, whether the credit product intervention order was made before, on or after that commencement.

**4 In the appropriate position in Schedule 3**

Insert:

Subsection 1023S(10)	100 penalty units
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## Schedule 2—Recognising experience in the financial advice industry

### Part 1—Transitional arrangements for experienced providers

#### *Corporations Act 2001*

##### 1 Part 10.57 (at the end of the heading)

Add “and related measures”.

##### 2 Section 1684 of Part 10.57

Before “In this Part:”, insert “(1)”.

##### 3 Section 1684 of Part 10.57

Insert:

*experienced provider*: a person is an *experienced provider* if:

- (a) the person is an individual; and
- (b) on a day within the period (the *qualifying period*) beginning on 1 January 2007 and ending on 31 December 2021, the person was, under this Act as in force on that day:
  - (i) a financial services licensee; or
  - (ii) an authorised representative of a financial services licensee; or
  - (iii) an employee or director of a financial services licensee; or
  - (iv) an employee or director of a related body corporate of a financial services licensee; and
- (c) the person was, under this Act as in force on that day, authorised to provide personal advice to retail clients in relation to any financial product other than:
  - (i) a general insurance product; or
  - (ii) a consumer credit insurance product; or
  - (iii) for a day within the qualifying period that is on or after 1 July 2012—a basic banking product; and

- (d) the person satisfies paragraphs (b) and (c) for at least 10 years (that is, 3,650 days) within the qualifying period (whether consecutive or not); and
- (e) before the end of the qualifying period, the person has never:
  - (i) been banned or disqualified under Division 8 of Part 7.6 as in force at that time; or
  - (ii) given an undertaking under section 93AA or 171E of the ASIC Act as in force at that time.

#### **4 Section 1684 of Part 10.57 (definition of *relevant provider*)**

Repeal the definition.

#### **5 Section 1684 of Part 10.57**

Insert:

*second amending Act* means the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

#### **6 At the end of section 1684 of Part 10.57**

Add:

- (2) An expression used in this Part that is also used in Part 7.6 has the same meaning as in Part 7.6.

#### **7 Before section 1684A**

Insert:

#### **1684AA Experienced provider pathway**

*Recognising experience*

- (1) Despite anything else in this Part, a person (the *experienced person*) who:
  - (a) is an experienced provider; and
  - (b) if the experienced person is an existing provider and is a relevant provider at the start of their exam cut-off day—meets the education and training standard in subsection 921B(3) at or before the start of that day;

is taken to meet the education and training standards in subsections 921B(2) and (4) if the experienced person makes a declaration under subsection (2) of this section.

- (2) For the purposes of subsection (1), the experienced person may make a written declaration confirming the experienced person satisfies the definition of *experienced provider* in subsection 1684(1).

Note 1: If, on 1 January 2026, the experienced person is an existing provider and has not met the standards, the person may:

- (a) cease to be a relevant provider (see subsection 1684D(7)); and
- (b) contravene subsection 911A(1), 911B(1), 921BA(1) or 921BA(3) and consequently commit an offence or be liable to a civil penalty.

Note 2: If the experienced person is required to meet the standards but has not otherwise done so, the person cannot (without first making the declaration):

- (a) be granted an Australian financial services licence covering the provision of personal advice (see paragraph 921C(1)(a)); or
- (b) be given an authorisation to provide personal advice (see subsections 921C(2) to (4)).

Note 3: A person may commit an offence or contravene a civil penalty provision if the person gives false or misleading information (see section 1308 of this Act and section 137.1 of the *Criminal Code*).

#### *Requirement to lodge notice*

- (3) A notice relating to the experienced person must be lodged with ASIC under this section in the prescribed form if the experienced person meets the education and training standards in subsections 921B(2) and (4) (the *standards*) because of subsection (1) of this section.

Note 1: For how to lodge a notice in the prescribed form, see section 350.

Note 2: The prescribed form may deal with information required under various sections (for example, sections 922D to 922L) of this Act.

#### *Who must lodge notice*

- (4) The notice must be lodged by:
- (a) if the experienced person is a financial services licensee—the experienced person; or



- (b) otherwise—each financial services licensee on whose behalf the experienced person is authorised to provide personal advice to retail clients in relation to relevant financial products.

*When notice must be lodged*

- (5) A person who must lodge the notice (the **lodger**) must do so within 30 business days after:
  - (a) if the experienced person:
    - (i) makes the declaration under subsection (2) before 1 July 2024; and
    - (ii) if paragraph (4)(b) applies—gives the declaration to the lodger before 1 July 2024;
  - 1 July 2024; or
  - (b) otherwise—the later of:
    - (i) the day the experienced person makes the declaration under subsection (2); and
    - (ii) if paragraph (4)(b) applies—the day the experienced person gives the declaration to the lodger.

*Content of notice*

- (6) The notice must include:
  - (a) the experienced person's name; and
  - (b) the address of the experienced person's principal place of business; and
  - (c) a written statement by the lodger to the effect that:
    - (i) if paragraph (4)(a) applies—they have met the standards because of subsection (1); or
    - (ii) if paragraph (4)(b) applies—they have received a copy of the experienced person's declaration made under subsection (2).

*Requirement to give licensees the declaration*

- (7) If paragraph (4)(b) applies, the experienced person must:
  - (a) give each licensee mentioned in that paragraph a copy of the experienced person's declaration made under subsection (2); and

(b) do so as soon as practicable after making the declaration.

*Register of Relevant Providers*

- (8) Subsection 922Q(2) applies as if the details that must be entered on the Register of Relevant Providers in respect of a person who is or was a relevant provider included whether a notice has been lodged with ASIC under this section in relation to the person.

*Failing to lodge notice*

- (9) Section 922M applies in relation to a person who must lodge a notice under this section in a corresponding way to the way that section applies in relation to a person required to cause a notice to be lodged under a notice provision.

Note: Section 922M provides an offence and civil penalty for failing to lodge certain notices.

## **Part 2—Addressing known issues for new entrants**

### ***Corporations Act 2001***

#### **8 Paragraph 921B(2)(a)**

Repeal the paragraph, substitute:

- (a) the person:
  - (i) has completed a bachelor or higher degree, or equivalent qualification, approved by the Minister; and
  - (ii) has satisfied the conditions (if any) approved by the Minister for completing the degree or qualification, and has satisfied those conditions in a way (if any) approved by the Minister; or

#### **9 At the end of subsection 921B(2)**

Add:

- ; or (c) the person holds an approval in force under subsection 921GA(3).

#### **10 Paragraph 921B(6)(a)**

Omit “paragraph (2)(a)”, substitute “subparagraph (2)(a)(i)”.

#### **11 After paragraph 921B(6)(a)**

Insert:

- (aa) approve for the purposes of subparagraph (2)(a)(ii):
  - (i) one or more conditions for completing an approved degree or qualification; and
  - (ii) one or more ways for satisfying such conditions;

#### **12 Paragraph 921G(3)(a)**

Omit “paragraph 921B(2)(a)”, substitute “subparagraph 921B(2)(a)(i)”.

#### **13 Subsection 921G(4)**

Omit “paragraph 921B(2)(a)”, substitute “subparagraph 921B(2)(a)(i)”.

## 14 After section 921G

Insert:

### 921GA Approval of domestic qualifications

#### *Application for approval*

- (1) A person who:
  - (a) has completed a bachelor or higher degree approved by a determination in force for the purposes of subparagraph 921B(2)(a)(i) (the **domestic qualification**); but
  - (b) has not completed the domestic qualification in accordance with subparagraph 921B(2)(a)(ii);may apply to the Minister for approval of the domestic qualification.
- (2) The application must be:
  - (a) in writing; and
  - (b) in the form approved, in writing, by the Minister.

#### *Approval or refusal*

- (3) The Minister must, by written notice given to the person, either:
  - (a) approve the domestic qualification; or
  - (b) refuse to approve the domestic qualification.
- (4) The Minister may approve the domestic qualification under subsection (3) only if the Minister is satisfied that:
  - (a) the person has completed the domestic qualification but not in accordance with subparagraph 921B(2)(a)(ii); and
  - (b) the person nevertheless has qualifications equivalent to the person completing the domestic qualification in accordance with subparagraph 921B(2)(a)(ii).

#### *When approval comes into force*

- (5) An approval under subsection (3) comes into force when it is given.

**15 Subsection 1684A(2)**

Omit “subsection 921B(2), as amended by Schedule 1 to the amending Act” (wherever occurring), substitute “subsection 921B(2), as amended by Schedule 2 to the second amending Act”.

**16 Subparagraph 1684C(3)(b)(i)**

Omit “subsection 921B(2), as amended by Schedule 1 to the amending Act”, substitute “subsection 921B(2), as amended by Schedule 2 to the second amending Act”.

**17 Paragraphs 1684D(3)(a) and (4)(a)**

Omit “subsection 921B(2), as amended by Schedule 1 to the amending Act”, substitute “subsection 921B(2), as amended by Schedule 2 to the second amending Act”.

## **Part 3—Addressing known issues for qualified tax relevant providers**

### ***Corporations Act 2001***

#### **18 At the end of subsection 921BB(1)**

Add:

Note: The determination may deal with matters of a transitional nature relating to any or all of the requirements mentioned in this subsection.

#### **19 After subparagraphs 921C(1)(b)(i) and (c)(i)**

Insert:

(ia) the applicant is not a registered tax agent; and

#### **20 After subparagraph 921C(2)(c)(i)**

Insert:

(ia) the person is not a registered tax agent; and

#### **21 After subparagraph 921C(3)(c)(i)**

Insert:

(ia) the individual is not a registered tax agent; and

#### **22 After subparagraph 921C(4)(c)(i)**

Insert:

(ia) the employee or director is not a registered tax agent;  
and

## **Part 4—Transitional provisions**

### ***Corporations Act 2001***

#### **23 Division 3 of Part 10.57 (at the end of the heading)**

Add “relating to the amending Act”.

#### **24 In the appropriate position in Part 10.57**

Insert:

### **Division 3A—Transitional provisions relating to the second amending Act**

#### **1684VA Application of amendment—approval of domestic qualifications**

Section 921GA, as inserted by Part 2 of Schedule 2 to the second amending Act, applies in relation to an application made under that section on or after the commencement of that Part, whether the degree or qualification to which the application relates was completed before, on or after that commencement.

#### **1684VB Transitional—determination approving degrees and qualifications**

- (1) This section applies to a determination that is in force immediately before the commencement of Part 2 of Schedule 2 to the second amending Act:
  - (a) under subsection 921B(6); and
  - (b) for the purposes of paragraph 921B(2)(a).
- (2) The determination continues in force (and may be dealt with) on and after that commencement as if the determination had been made:
  - (a) under subsection 921B(6), as amended by that Part; and
  - (b) for the purposes of paragraph 921B(2)(a), as substituted by that Part.

**1684VC Certain requirements for registered tax agents**

- (1) For the purposes of applying subsection 921C(1) to the licensing of a registered tax agent during the period:
  - (a) starting on 1 January 2022; and
  - (b) ending immediately before the commencement of Part 3 of Schedule 2 to the second amending Act;treat the registered tax agent as having met each requirement referred to in subparagraph 921C(1)(b)(ii) or (c)(ii).
  
- (2) For the purposes of applying subsection 921C(2), (3) or (4) to the authorisation of a registered tax agent during the period:
  - (a) starting on 1 January 2022; and
  - (b) ending immediately before the commencement of Part 3 of Schedule 2 to the second amending Act;treat the registered tax agent as having met each requirement referred to in subparagraph (c)(ii) of that subsection.



## **Part 5—Contingent amendments for Schedule 2 to the Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023**

### **Division 1—Main amendment**

#### *Corporations Act 2001*

#### **25 Section 910A (paragraph (b) of the definition of *qualified tax relevant provider*)**

Repeal the paragraph, substitute:

- (b) one or more of the following applies:
  - (i) the person is a registered tax agent;
  - (ii) if a determination is in force under subsection 921BB(1)—the person meets each requirement set out in the determination that is of a kind mentioned in any of paragraphs (a) to (d) of that subsection.

Note: This item commences at the same time as Parts 1 to 4 of this Schedule.

### **Division 2—Contingent amendment if the Law Improvement measure commences second**

#### *Corporations Act 2001*

#### **26 Section 910A (paragraph (b) of the definition of *qualified tax relevant provider*)**

Repeal the paragraph, substitute:

- (b) one or more of the following applies:
  - (i) the person is a registered tax agent;
  - (ii) if a determination is in force under subsection 921BB(1)—the person meets each requirement set out in the determination that is of a kind mentioned in any of paragraphs (a) to (d) of that subsection.

**Schedule 2** Recognising experience in the financial advice industry

**Part 5** Contingent amendments for Schedule 2 to the Treasury Laws Amendment  
(2023 Law Improvement Package No. 1) Act 2023

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Note: This item repeats the amendment to the definition of *qualified tax relevant provider* made by Division 1 of this Part. This is to ensure the amendment is not undone by Schedule 2 to the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023*, if that Schedule were to commence at or after the commencement of Parts 1 to 4 of this Schedule.

**Division 3—Contingent amendment for reference to  
notice provisions**

***Corporations Act 2001***

**27 Subsection 1684AA(9)**

Omit “notice provision”, substitute “provision referred to in subsection 922L(1)”.

## **Part 6—Contingent amendments for Part 1 of Schedule 4 to the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023**

### **Division 1—Main amendment**

#### *Corporations Act 2001*

##### **28 Paragraph 1684D(6)(a)**

Omit “subsection 921B(2), as amended by Schedule 1 to the amending Act”, substitute “subsection 921B(2), as amended by Schedule 2 to the second amending Act”.

Note: This item commences at the same time as Parts 1 to 4 of this Schedule.

### **Division 2—Contingent amendment if the Modernising Business measure commences second**

#### *Corporations Act 2001*

##### **29 Paragraph 1684D(6)(a)**

Omit “subsection 921B(2), as amended by Schedule 1 to the amending Act”, substitute “subsection 921B(2), as amended by Schedule 2 to the second amending Act”.

Note: This item repeats the amendment to paragraph 1684D(6)(a) made by Division 1 of this Part. This is to ensure the amendment is not undone by Part 1 of Schedule 4 to the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023*, if that Part were to commence at or after the commencement of Parts 1 to 4 of this Schedule.

## Schedule 3—Competition in the clearing and settlement of cash equities

### Part 1—CS services rules

#### *Australian Securities and Investments Commission Act 2001*

##### **1 After paragraph 127(2A)(d)**

Insert:

(da) the Australian Competition and Consumer Commission;

#### *Corporations Act 2001*

##### **2 Section 9**

Insert:

*ACCC* means the Australian Competition and Consumer Commission.

*CS service* has the meaning given by section 828.

*CS services rules*: see subsection 828A(1).

##### **3 At the end of subsection 822A(1)**

Add “, and the matters specified in the CS services rules for the purposes of this subsection”.

##### **4 After paragraph 822B(2)(c)**

Insert:

(d) the CS services rules;

##### **5 At the end of subsection 822E(4)**

Add “, and the matters specified in the CS services rules for the purposes of this subsection”.

##### **6 Paragraph 827A(2)(h)**

After “ASIC”, insert “, the ACCC”.

## **7 Subsection 827D(2A)**

After “the standards and”, insert “the CS services rules.”.

## **8 After Part 7.3**

Insert:

### **Part 7.3A—CS services**

#### **Division 1—Preliminary**

##### **828 Meaning of *CS service***

- (1) A *CS service* is a service that can only be provided if it has access to a clearing and settlement facility, or to data used in the operation of a clearing and settlement facility.
- (2) The operation of a clearing and settlement facility is taken to be the provision of a *CS service*.

#### **Division 2—Regulation of CS services: CS services rules**

##### **Subdivision A—Power to make CS services rules**

###### **828A CS services rules**

- (1) ASIC may, by legislative instrument, make rules (the *CS services rules*) that deal with the following:
  - (a) the activities, conduct or governance of CS facility licensees, and associated entities of CS facility licensees, in relation to CS services;
  - (b) if regulations made for the purposes of this paragraph specify other persons—the activities, conduct or governance of those persons in relation to CS services;
  - (c) matters that are incidental to the matters mentioned in paragraphs (a) and (b).
- (2) Without limiting the scope of subsection (1), the rules may deal with the following:

- (a) the specification of persons who are required to comply with requirements imposed by the rules;
  - (b) for the purposes of subsection 822A(1)—matters with which the operating rules of a licensed CS facility must deal, in relation to CS services;
  - (c) for the purposes of subsection 822A(2)—matters in respect of which a licensed CS facility must have written procedures, in relation to CS services;
  - (d) for the purposes of subsection 822E(4)—matters to which the Minister must have regard, as mentioned in that subsection, in relation to CS services.
- (3) For the purposes of this section, governance of a person may be in relation to CS services even if there only an indirect relationship between the governance and CS services.
- (4) Despite subsection (1), the rules cannot provide for matters in relation to a clearing and settlement facility that is exempt from the operation of Part 7.3 because of an exemption under section 820C.

**828B CS services in relation to which rules may impose requirements**

*Requirements can only be imposed in relation to CS services covered by a determination under this section*

- (1) The CS services rules cannot impose requirements in relation to CS services unless the CS services are covered by a determination under this section.

*Minister may determine classes of CS services*

- (2) For the purposes of subsection (1), the Minister may, by legislative instrument, make a determination specifying one or more classes of CS services.

*Making determinations by reference to matters*

- (3) A determination under subsection (2) may specify a class of CS services by reference to any of the following matters:
- (a) CS facilities to which the CS services have access;

- (b) CS facilities, where data to which the CS services have access is used in the operation of the CS facilities;
  - (c) financial products to which the CS services relate.
- (4) Subsection (3) does not limit:
- (a) the matters by reference to which a determination under subsection (2) may specify a class of CS services; and
  - (b) the operation of subsection 13(3) of the *Legislation Act 2003*.

*Making determinations: matters to which the Minister has regard*

- (5) In considering whether to make a determination under subsection (2), the Minister:
- (a) must have regard to:
    - (i) the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system, of making the determination; and
    - (ii) the likely regulatory impact of making the determination; and
    - (iii) the likely effect of making the determination on the safety, fairness and effectiveness of competition in the provision of CS services; and
  - (b) must have regard to the matters (if any) raised by ASIC, the ACCC or the Reserve Bank of Australia in advice provided under subsection (6) in relation to the determination; and
  - (c) may have regard to any other matters that the Minister considers relevant.

Note: Matters that the Minister may have regard to under paragraph (c) may, for example, include any relevant international standards and international commitments.

*ASIC, ACCC or Reserve Bank may advise Minister*

- (6) ASIC, the ACCC or the Reserve Bank of Australia may (on its own initiative) and must (at the request of the Minister):
- (a) consider whether a determination should be made under subsection (2) specifying one or more particular classes of CS services; and
  - (b) advise the Minister accordingly.

*Amendment and revocation of determinations*

- (7) The Minister may amend or revoke a determination under subsection (2) in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).

**Subdivision B—Compliance with CS services rules**

**828C Obligation to comply with CS services rules**

A person must comply with provisions of the CS services rules that apply to the person.

Note 1: This section is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this section, see section 1317S.

Note 2: If there is an inconsistency between the standards determined under section 827D and the CS services rules, the standards prevail: see subsection 827D(2A).

**828D Obligation to notify ASIC in respect of breach**

- (1) A person must give written notice to ASIC, as soon as practicable, if the person becomes aware that the person may no longer be able to meet, or has breached, an obligation under section 828C.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (2) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

- (3) If ASIC receives a notice under subsection (1), ASIC may give the Minister advice about the matter to which the notice relates.

**828E Alternatives to civil proceedings**

- (1) The regulations may provide for a person who is alleged to have contravened section 828C to do one or more of the following as an alternative to civil proceedings:

(a) pay a penalty to the Commonwealth;



- (b) undertake or institute remedial measures (including education programs);
  - (c) accept sanctions other than the payment of a penalty to the Commonwealth;
  - (d) enter into a legally enforceable undertaking.
- (2) The penalty payable under regulations made under paragraph (1)(a) in relation to an alleged contravention of a CS services rule must not exceed:
- (a) for an individual—3,000 penalty units; and
  - (b) for a body corporate—15,000 penalty units.
- (3) Without limiting regulations that may be made for the purpose of paragraph (1)(d), those regulations may provide for one or more of the following kinds of undertakings:
- (a) an undertaking to take specified action within a specified period;
  - (b) an undertaking to refrain from taking specified action;
  - (c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

**828F Failure to comply with CS services rules does not invalidate transaction etc.**

A failure, in relation to a transaction, to comply with a requirement of the CS services rules does not invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

**Subdivision C—Power of ASIC to give directions etc.**

**828G ASIC’s power to give directions to person not complying with obligations**

- (1) If ASIC considers that a person is not complying, or is not likely to comply, with its obligations under the CS services rules, ASIC may give the person a direction, in writing, to do specified things that ASIC believes will promote compliance by the person with those obligations.

- (2) When ASIC gives the person the direction, ASIC must also give the person a statement, in writing, setting out the reasons for giving the direction.
- (3) The direction has effect until the earlier of the following times:
  - (a) the time ASIC revokes the direction under subsection (7);
  - (b) the end of the period specified in the direction as the period during which the direction is effective.
- (4) While the direction has effect, the person must comply with the direction.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (5) If the person fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the person comply with the direction.
- (6) ASIC may vary the direction by giving written notice to the person.
- (7) ASIC may revoke the direction by giving written notice to the person.

### **Subdivision D—The process of making CS services rules**

#### **828H Matters to which ASIC must have regard when making rules**

In considering whether to make a CS services rule, ASIC:

- (a) must have regard to:
  - (i) the likely effect of the proposed rule on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
  - (ii) the likely regulatory impact of the proposed rule; and
  - (iii) the likely effect of the proposed rule on the safety, fairness and effectiveness of competition in the provision of CS services; and
  - (iv) if the proposed rule will impose requirements in relation to a CS service—the structure of the market for the provision of the CS service; and

- (b) must have regard to the matters (if any) raised by the ACCC or the Reserve Bank of Australia in consultations mentioned in paragraph 828J(1)(b); and
- (c) may have regard to any other matters that ASIC considers relevant.

Note: Matters that ASIC may have regard to under paragraph (c) may, for example, include any relevant international standards and international commitments.

### **828J ASIC to consult before making rules**

- (1) ASIC must not make a CS services rule unless ASIC:
  - (a) has consulted the public about the proposed rule; and
  - (b) has also consulted the following about the proposed rule:
    - (i) the ACCC;
    - (ii) the Reserve Bank of Australia;
    - (iii) any other person or body as required by regulations made for the purpose of this subparagraph.

Note: In some situations, consultation is not required: see section 828L.

- (2) Without limiting the ways in which ASIC may comply with the obligation in paragraph (1)(a) to consult the public about a proposed rule, ASIC is taken to comply with that obligation if ASIC, on its website:
  - (a) makes the proposed rule, or a description of the content of the proposed rule, available; and
  - (b) invites the public to comment on the proposed rule.
- (3) A failure to consult as required by subsection (1) does not invalidate a CS services rule.

### **828K Ministerial consent to rules required**

- (1) ASIC must not make a CS services rule unless the Minister has consented, in writing, to the making of the rule.

Note: In some situations, consent is not required: see section 828L.

- (2) A consent under subsection (1) is not a legislative instrument.

### **828L Emergency rules: consultation and consent not required**

- (1) ASIC may make a CS services rule without consulting as required by section 828J, and without the consent of the Minister as required by section 828K, if ASIC is of the opinion that it is necessary, or in the public interest, to do so in order to protect:
  - (a) the Australian economy; or
  - (b) the efficiency, integrity and stability of the Australian financial system; or
  - (c) safety, fairness and effective competition in the provision of CS services.
- (2) However, if ASIC does so, ASIC must:
  - (a) provide the Minister, on the following day, with a written explanation of the need for the rule; and
  - (b) amend or revoke the rule in accordance with any written directions of the Minister.
- (3) A direction under paragraph (2)(b) is not a legislative instrument.
- (4) ASIC must not make a CS services rule in accordance with subsection (1) unless ASIC has consulted the Reserve Bank of Australia about the proposed rule.
- (5) A failure to consult as required by subsection (4) does not invalidate a CS services rule.

### **828M Amendment and revocation of CS services rules**

- (1) ASIC may amend or revoke a CS services rule in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).
- (2) However, the requirements of sections 828H, 828J and 828K do not apply in relation to an amendment or revocation pursuant to a direction by the Minister under paragraph 828L(2)(b).

## **Division 3—Other provisions**

### **828N ASIC may give advice to Minister**

ASIC may give advice to the Minister in relation to:

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- (a) any matter in respect of which the Minister has a discretion under this Part; or
- (b) any other matter concerning the CS services rules.

Note: In some cases, the Minister must have regard to ASIC's advice: see paragraph 827A(2)(h).

### **828P ACCC may give advice to Minister**

The ACCC may give advice to the Minister in relation to any matter concerning the CS services rules.

Note: In some cases, the Minister must have regard to the ACCC's advice: see paragraph 827A(2)(h).

### **828Q Reserve Bank of Australia may give advice to Minister**

The Reserve Bank of Australia may give advice to the Minister in relation to:

- (a) any matter in respect of which the Minister has a discretion under this Part; or
- (b) any other matter concerning the CS services rules.

Note: In some cases, the Minister must have regard to the Reserve Bank's advice: see paragraph 827A(2)(h).

### **828R Exemptions by the regulations or by ASIC**

- (1) The *provisions covered by this section* are:
  - (a) the following provisions:
    - (i) the provisions of this Part;
    - (ii) the provisions of regulations made for the purposes of provisions of this Part;
    - (iii) the provisions of rules made under Division 2; and
  - (b) definitions in this Act, or in the regulations, as they apply to references in provisions referred to in paragraph (a).
- (2) The regulations, or ASIC by written instrument, may exempt a person or class of persons from all or specified provisions covered by this section.
- (3) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an

exemption applies must comply with the condition. The Court may, on application by ASIC, order the person to comply with the condition in a specified way.

- (4) An exemption by ASIC is a legislative instrument if the exemption is expressed to apply in relation to a class of persons, (whether or not it is also expressed to apply in relation to one or more persons identified otherwise than by reference to membership of a class).
- (5) If subsection (4) does not apply to an exemption by ASIC, the exemption is a notifiable instrument.
- (6) If there is an inconsistency between:
  - (a) an exemption prescribed by regulations made for the purposes of subsection (2); and
  - (b) an exemption by ASIC under that subsection;(including in relation to any conditions specified by ASIC), the regulations prevail to the extent of the inconsistency.

### **9 After paragraph 1317C(gcc)**

Insert:

- (gcd) a decision by ASIC to:
  - (i) make CS services rules; or
  - (ii) give a direction under subsection 828G(1); or
- (gce) a decision by the Minister to:
  - (i) make a determination under subsection 828B(2); or
  - (ii) consent under subsection 828K(1) to the making of CS services rules; or
  - (iii) make directions under paragraph 828L(2)(b); or

### **10 In the appropriate position in subsection 1317E(3)**

Insert:

section 828C	complying with CS services rules	uncategorised
section 828D	obligation to notify ASIC of inability to meet obligations under section 828C	uncategorised

### **11 In the appropriate position in Schedule 3**

Insert:

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Subsection 828D(1)	100 penalty units
Subsection 828G(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed

## Part 2—CS services arbitration

### Division 1—ASIC-related amendments

#### *Competition and Consumer Act 2010*

##### **12 Subsection 4(1)**

Insert:

*ASIC* means the Australian Securities and Investments Commission.

##### **13 Subsection 26(1)**

Omit all the words after “staff member of”, substitute “ASIC”.

##### **14 Subsection 26(2)**

Omit “the Australian Securities and Investments Commission”, substitute “ASIC”.

##### **15 Subsection 86E(4)**

Repeal the subsection.

##### **16 Paragraph 155AAA(12)(d)**

Repeal the paragraph, substitute:  
(d) ASIC;

### Division 2—Main amendments

#### *Competition and Consumer Act 2010*

##### **17 Paragraph 44T(1)(b)**

Omit “determination”, substitute “final determination”.

##### **18 After subparagraph 76(1)(a)(iia)**

Insert:

(iib) subsection 153ZEL(2);



**19 Subsection 76(1A) (after table item 13)**

Insert:

13A subsection 153ZEL(2) 600 penalty units \$500,000

**20 Subparagraph 80(1)(a)(v)**

Omit “Part XICA; or”, substitute “Part XICA;”.

**21 At the end of paragraph 80(1)(a)**

Add:

(vi) section 153ZEL; or

**22 After Part XICA**

Insert:

**Part XICB—Access to CS services**

**Division 1—Preliminary**

**153ZEA Objects of Part**

The objects of this Part are to:

- (a) facilitate access to CS services on terms and conditions, including pricing, that are transparent, non-discriminatory, fair and reasonable; and
- (b) support the long-term interests of the Australian market by delivering outcomes that are consistent with those that might be expected in a competitive market for CS services; and
- (c) address the imbalance in bargaining power between providers of CS services and access seekers in Australia; and
- (d) provide incentives for providers of CS services to negotiate commercial and non-discriminatory terms of access with access seekers of the CS services in Australia; and
- (e) provide for the timely resolution of access disputes between providers of CS services and access seekers, if they arise; and
- (f) discourage providers of CS services from exerting market power to the detriment of competition in upstream and downstream markets.

### 153ZEB Definitions

In this Part:

**access dispute** means an access dispute notified under section 153ZEM.

**access seeker**, for a CS service, means a person who wants access to the CS service or wants a change to some aspect of the person's existing access to the CS service.

**Australian CS facility licence** has the same meaning as in section 761A of the *Corporations Act 2001*.

**constitutional trade or commerce** has the same meaning as in section 53B.

**covered by a declaration**: see subsection 153ZEF(3).

**CS facility** means a clearing and settlement facility (within the meaning of section 761A of the *Corporations Act 2001*).

**CS facility licensee** has the same meaning as in section 761A of the *Corporations Act 2001*.

**CS service** has the same meaning as in section 828 of the *Corporations Act 2001*.

**declared CS service**: a CS service is a **declared CS service** if:

- (a) the provider of the CS service is a CS facility licensee or a person that is related to a CS facility licensee; and
- (b) the CS facility licensee holds an Australian CS facility licence that authorises the CS facility licensee to operate a CS facility; and
- (c) the CS service can only be provided because it has access to, or to data used in the operation of, the CS facility; and
- (d) the CS service is covered by a declaration under section 153ZEF.

**determination** means:

- (a) a final determination made under paragraph 153ZEP(1)(a); and

- (b) an interim determination made under paragraph 153ZEP(1)(b).

**linked:** a CS facility is **linked to** a CS service if:

- (a) the CS service is a declared CS service; and  
(b) the CS facility is the CS facility mentioned in paragraphs (b) and (c) of the definition of declared CS service.

### **153ZEC How this Part applies to partnerships and joint ventures**

- (1) This section applies if a provider of a CS service is a partnership or joint venture that consists of 2 or more corporations. Those corporations are referred to in this section as the participants.
- (2) If this Part requires or permits something to be done by the provider, the thing may be done by one or more of the participants on behalf of the provider.
- (3) If a provision of this Part refers to the provider bearing any costs, the provision applies as if the provision referred to any of the participants bearing any costs.
- (4) If a provision of this Part refers to the provider doing something, the provision applies as if the provision referred to one or more of the participants doing that thing on behalf of the provider.
- (5) If:
- (a) a provision of this Part requires the provider to do something, or prohibits the provider from doing something; and
- (b) a contravention of the provision is an offence;
- the provision applies as if a reference to the provider were a reference to any person responsible for the day-to-day management and control of the provider.
- (6) If:
- (a) a provision of this Part requires a provider to do something, or prohibits a provider doing something; and
- (b) a contravention of the provision is not an offence;
- the provision applies as if the reference to provider were a reference to each participant and to any other person responsible for the day-to-day management and control of the provider.

### **153ZED Constitutional limits on operation of this Part**

This Part does not apply in relation to an access seeker's access to a CS service unless:

- (a) the provider of the CS service is a corporation (or a partnership or joint venture consisting wholly of corporations); or
- (b) the access seeker is a corporation; or
- (c) the access is (or would be) in the course of, or for the purposes of, constitutional trade or commerce.

### **153ZEE This Part binds the Crown**

- (1) This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) Nothing in this Part makes the Crown liable to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Commonwealth or an authority of a State or Territory.

## **Division 2—Declaration of CS services**

### **153ZEF Minister may declare a CS service**

- (1) The Minister may, by legislative instrument, make a declaration specifying any of the following as services to which access may be the subject of negotiation or arbitration under this Part:
  - (a) one or more CS services;
  - (b) one or more classes of CS services.
- (2) A declaration under subsection (1) may also specify one or more CS services that are taken not to be covered by the declaration.
- (3) A CS service is covered by a declaration if:
  - (a) the CS service is specified, or is in a class of CS services specified, in a declaration under subsection (1) that is in force; and

- (b) the CS service is not specified as a CS service that is taken not to be covered by a declaration in a declaration under subsection (1) that is in force.

*Matters to which the Minister has regard*

- (4) In considering whether to make a declaration under subsection (1), the Minister:
  - (a) must have regard to:
    - (i) the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system, of making the declaration; and
    - (ii) the likely regulatory impact of the declaration; and
    - (iii) the extent to which a provider of a CS service that will be affected by the declaration has a monopoly or significant market power over the provision of the CS service; and
  - (b) must have regard to the matters (if any) raised by the Commission in advice provided under subsection (5) in relation to the declaration; and
  - (c) may have regard to any other matters that the Minister considers relevant.

Note: Matters that the Minister may have regard to under paragraph (c) may, for example, include any relevant international standards and international commitments.

*Commission may advise Minister*

- (5) The Commission may (on its own initiative) and must (at the request of the Minister):
  - (a) consider whether a declaration should be made under subsection (1); and
  - (b) advise the Minister accordingly.

*Commission may request advice from ASIC or Reserve Bank*

- (6) The Commission may request advice from ASIC or the Reserve Bank of Australia for the purposes of informing its consideration and advice under subsection (5).

- (7) ASIC and the Reserve Bank of Australia may give advice to the Commission relating to whether a declaration should be made under subsection (1).

### **153ZEG Amendment and revocation of declarations**

- (1) The Minister may amend or revoke a declaration under subsection 153ZEF(1) in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).
- (2) The amendment or revocation of a declaration does not affect:
- (a) the arbitration of an access dispute that was notified under subsection 153ZEM(2) before the amendment or revocation; or
  - (b) the operation or enforcement of any determination made in the arbitration of an access dispute that was notified under subsection 153ZEM(2) before the amendment or revocation.

## **Division 3—Negotiation of access**

### **153ZEH Notification of negotiations under this Division**

- (1) This section applies in relation to a CS service if it is a declared CS service.
- (2) An access seeker for the CS service may notify the provider that it wishes to negotiate under this Division over one or more specified issues relating to any aspect of access to the CS service, including:
- (a) whether access can be granted; and
  - (b) the price and other terms and conditions of the access.
- (3) The notification must set out the following matters:
- (a) a contact person for the access seeker;
  - (b) contact details for the contact person;
  - (c) the specified issues mentioned in subsection (2);
  - (d) if regulations made for the purposes of this paragraph specify other matters—those matters.

*Notifying the Commission*

- (4) The access seeker must give a copy of the notification to the Commission as soon as practicable after notifying the provider under subsection (2).

**153ZEI Ending negotiations under this Division**

- (1) The access seeker may give notice to the provider that the negotiation is at an end, whether or not the access seeker also refers or has referred a related access dispute to arbitration under this Part.
- (2) The provider may give notice to the access seeker that the negotiation is at an end for the purposes of this Part if the CS service ceases to be a declared CS service.

*Timing*

- (3) The negotiation is taken to have ended for the purposes of this Part when the notice under subsection (1) or (2) is given.

*Notifying the Commission*

- (4) If the negotiation ends under subsection (1) or (2), the following person must notify the Commission as soon as practicable:
  - (a) if subsection (1) applies—the access seeker;
  - (b) if subsection (2) applies—the provider.

**153ZEJ Conducting negotiations under this Division**

*Parties to the negotiation*

- (1) The parties to the negotiation are:
  - (a) the access seeker; and
  - (b) the provider; and
  - (c) any other person that the access seeker and the provider agree to include as a party to the negotiations.

*Good faith*

- (2) Each party to the negotiation must participate in the negotiation in good faith.

*Timetable for negotiations*

- (3) Each party to the negotiation must seek to accommodate all reasonable requirements of the other parties regarding the timetable for the negotiation.

*Subject of negotiations*

- (4) The negotiation must be about:
- (a) the specified issues mentioned in subsection 153ZEH(2); and
  - (b) any other issue that the parties to the negotiation agree, in writing, that they wish to negotiate over.

*Notifying the Commission if agreement reached*

- (5) If the parties to the negotiation reach agreement over each issue mentioned in subsection (4), they must ensure that a written notification of the agreement is given to the Commission as soon as practicable.

**153ZEK Information request by bargaining party—general**

- (1) A party (the *requesting party*) to the negotiation may give another party (the *responding party*) a request that the responding party give the requesting party specified information if:
- (a) the information is held by the responding party or a related body corporate of the responding party; and
  - (b) it is reasonable for the requesting party to make the request for the purposes of this Division.
- (2) The request must:
- (a) be made in writing; and
  - (b) set out reasons why it is reasonable for the requesting party to make the request for the purposes of this Division; and
  - (c) if regulations made for the purposes of this paragraph specify other requirements—comply with those requirements.



- (3) After the request is made, the responding party must ensure that:
- (a) the request is complied with no later than 21 days after the request was given to the responding party, or any later date the requesting party agrees to; and
  - (b) the information requested is given in a readily readable form, including (where requested) in electronic file format with all underlying data files and inputs; and
  - (c) the information given is, or is relevant to, the specified information mentioned in subsection (1); and
  - (d) if regulations made for the purposes of this paragraph specify other requirements for that information—those requirements are satisfied.

*Duty of good faith*

- (4) Each party to a negotiation under this Division must request or provide information under this section in a manner and at a time consistent with the duty of the party to negotiate in good faith under subsection 153ZEJ(2).

**153ZEL Information request by bargaining party—miscellaneous rules**

- (1) Nothing in section 153ZEK requires or authorises the giving of information that is personal information (within the meaning of the *Privacy Act 1988*).
- (2) If the responding party gives information to the requesting party in order to comply with subsection 153ZEK(3), the requesting party must ensure that the information is not used for a purpose other than a purpose relating to this Part.

**Division 4—Notification of access disputes**

**153ZEM Notification of access disputes**

- (1) This section applies in relation to a CS service if it is a declared CS service.
- (2) If:

- (a) an access seeker for the CS service is unable to agree with the provider on one or more aspects of access to the CS service that are or have been the subject of a negotiation under Division 3; and
- (b) the access seeker and the provider are or were parties to the negotiation;

either party may notify the Commission in writing that an access dispute exists.

Note: An example of one of the things on which a provider and an access seeker for a CS service might disagree is whether a previous determination ought to be varied.

- (3) The notification must include information about:
  - (a) the issues (if any) on which agreement has been reached in the negotiation under Division 3; and
  - (b) the issues that are in dispute; and
  - (c) if regulations made for the purposes of this paragraph specify other matters—those matters.
- (4) On receiving the notification, the Commission must give notice in writing of the access dispute, as soon as practicable, to:
  - (a) the provider, if the access seeker notified the access dispute; and
  - (b) the access seeker, if the provider notified the access dispute; and
  - (c) any other person whom the Commission thinks might want to become a party to the arbitration.

### **153ZEN Withdrawal of notifications**

- (1) A notification under subsection 153ZEM(2) may be withdrawn as follows (and not otherwise):
  - (a) if the provider notified the dispute:
    - (i) the provider may withdraw the notification at any time before the Commission makes its final determination;
    - (ii) the access seeker may withdraw the provider's notification at any time after the Commission issues a draft final determination, but before it makes its final determination;

- (b) if the access seeker notified the dispute, the access seeker may withdraw the notification at any time before the Commission makes its final determination.
- (2) Despite subparagraph (1)(a)(ii), if the provider notified a dispute over variation of a final determination, the access seeker may not withdraw the provider's notification.
- (3) If the notification is withdrawn, it is taken for the purposes of this Part never to have been given.

## **Division 5—Arbitration of access disputes**

### **153ZEO Parties to the arbitration**

The parties to the arbitration of an access dispute notified under subsection 153ZEM(2) regarding access to a CS service are:

- (a) the provider mentioned in the notification; and
- (b) the access seeker mentioned in the notification; and
- (c) any other person who applies in writing to be made a party and is accepted by the Commission as having a sufficient interest.

### **153ZEP Determination by Commission**

- (1) Unless it terminates the arbitration under section 153ZEU, the Commission:
  - (a) must make a written final determination; and
  - (b) may make a written interim determination; on access by the access seeker to the CS service.
- (2) A determination may deal with any matter relating to access to the CS service by the access seeker, including matters that were not the basis for notification of the access dispute.

Example: A determination may do any of the following:

- (a) require the provider to provide access to the CS service by the access seeker;
- (b) require the access seeker to accept, and pay for, access to the CS service;
- (c) specify the terms and conditions of the access seeker's access to the CS service;

- (d) vary or revoke an earlier determination relating to access to the CS service by the access seeker.
- (3) Before making a determination, the Commission must:
  - (a) give a draft determination to the parties; and
  - (b) consult ASIC and the Reserve Bank of Australia about the determination.
- (4) When the Commission makes a determination, it must give the parties its reasons for making the determination.

Note: The Commission must also publish a written report about a final determination it makes (see section 153ZET).
- (5) A determination is not a legislative instrument.

### **153ZEQ Restrictions on access determinations**

- (1) The Commission must not make a determination that would have any of the following effects:
  - (a) preventing an existing user that is not related to the provider from obtaining sufficient access to the CS service to be able to meet the user's reasonably anticipated requirements, measured at the time when the dispute was notified;
  - (b) preventing a person that is not related to the provider from obtaining, by the exercise of a pre-notification right, sufficient access to the CS service to be able to meet the person's actual requirements;
  - (d) resulting in the access seeker becoming the owner (or one of the owners) of any part of the CS facility that is linked to the CS service, or of extensions of the CS facility, without the consent of the provider;
  - (e) requiring the provider to bear some or all of the costs of extending the CS facility;
  - (f) requiring the provider to bear some or all of the costs of maintaining extensions of the CS facility.
- (2) Paragraphs (1)(a) and (b) do not apply in relation to the requirements and rights of the access seeker and the provider when the Commission is making a determination in arbitration of an access dispute relating to an earlier determination of an access dispute between the access seeker and the provider.

- (3) A determination is of no effect to the extent it has any of the effects mentioned in subsection (1).
- (4) If the Commission makes a determination that has the effect of depriving a person (the **second person**) of a pre-notification right to require the provider to supply the CS service to the second person, the determination must also require the access seeker:
- (a) to pay to the second person such amount (if any) as the Commission considers is fair compensation for the deprivation; and
  - (b) to reimburse the provider and the Commonwealth for any compensation that the provider or the Commonwealth agrees, or is required by a court order, to pay to the second party as compensation for the deprivation.

Note: Without infringing paragraph (1)(b), a determination may deprive a second person of the right to be supplied with an amount of CS service equal to the difference between the total amount of CS service the person was entitled to under a pre-notification right and the amount that the person actually needs to meet the person's actual requirements.

- (5) If the provider is not the holder of the Australian CS facility licence that authorises the operation of the CS facility, this section applies in relation to the holder in the same way as it applies in relation to the provider.
- (6) In this section:
- existing user** means a person (including the provider) who was using the CS service at the time when the access dispute was notified.

**pre-notification right** means a right under a contract, or under a determination, that was in force at the time when the access dispute was notified.

### **153ZER Matters that the Commission must take into account**

#### *Final determinations*

- (1) The Commission must take the following matters into account in making a final determination:

- (a) the objects of this Part;
  - (b) the operational and technical requirements (including those relating to interoperability and financial stability) necessary for the safe and reliable operation of a current or proposed CS facility that is or may be linked to the CS service;
  - (c) the pricing principles specified in subsection (3);
  - (d) if an obligation of the provider under an Australian law in relation to the CS service is mentioned in a party's case—that obligation;
  - (e) if the provider is not the holder of the Australian CS facility licence that authorises the operation of the CS facility, and an obligation of the holder under an Australian law in relation to the CS service is mentioned in a party's case—that obligation;
  - (f) any advice provided by ASIC or the Reserve Bank of Australia in response to consultations undertaken under paragraph 153ZEP(3)(b);
  - (g) any advice provided by ASIC or the Reserve Bank of Australia under subsection 153ZEX(3) in relation to the arbitration;
  - (h) any guidance or policies relating to CS services made by the Commission, ASIC or the Reserve Bank of Australia;
  - (i) the legitimate business interests of the provider, and the provider's investment in the CS facility;
  - (j) if the provider is not the holder of the Australian CS facility licence that authorises the operation of the CS facility—the legitimate business interests of the holder, and the holder's investment in the CS facility;
  - (k) the interests of all persons who have rights to access the CS service;
  - (l) the public interest, including the public interest in having competition in markets (whether or not in Australia).
- (2) The Commission may take any other matters that it thinks are relevant into account in making a final determination.
- (3) For the purposes of paragraph (1)(c), the pricing principles are as follows:
-

- (a) access prices should generate expected revenue for a CS service that reflects the costs of providing access to the CS service;
- (b) access prices should include a return on investment commensurate with the regulatory and commercial risks involved;
- (c) access price structures should not allow a vertically integrated provider to set terms and conditions that discriminate in favour of its related entities, except to the extent that the cost of providing access to other access seekers is higher;
- (d) access pricing should provide incentives to reduce costs or otherwise improve productivity.

*Interim determinations*

- (4) The Commission may take a matter referred to in subsection (1) or (2) into account in making an interim determination.
- (5) In making an interim determination, the Commission does not have a duty to consider whether to take into account a matter referred to in subsection (1).

**153ZES Time limit for Commission's final determination**

*Commission to make final determination within 180 days*

- (1) The Commission must make a final determination within the period of 180 days (the ***expected period***) starting at the start of the day the access dispute is notified.

*Extending the period*

- (2) Before the end of the expected period, the Commission may, if satisfied it is appropriate to do so, extend the expected period.
- (3) When the Commission extends the expected period, it must:
  - (a) notify the parties of the extension before it takes effect; and
  - (b) give the parties reasons for the extension.
- (4) The expected period may be extended one or more times, but must not exceed 365 days.

*Deemed final determination*

- (5) If the Commission does not make a final determination within the expected period, it is taken, immediately after the end of the expected period, to have:
- (a) made a final determination that does not impose any obligations on the parties or alter any obligations (if any) that exist at that time between the parties; and
  - (b) published a written report about the final determination under section 153ZET.

**153ZET Arbitration reports**

- (1) The Commission must prepare a written report about a final determination it makes. It must publish, by electronic or other means, the report.
- (2) The report may include the whole or a part of the determination and the reasons for the determination or the part of the determination.

*Report must include certain matters*

- (3) The report must set out the following matters:
- (a) the issues on which agreement was reached between the parties to the arbitration and the issues which were in dispute;
  - (b) the principles the Commission applied in making the determination;
  - (c) the methodologies the Commission applied in making the determination;
  - (d) how the Commission took into account the matters mentioned in subsection 153ZER(1) in making the determination;
  - (e) any matter the Commission took into account under subsection 153ZER(2) in making the determination and the reasons for doing so;
  - (f) any information provided by the parties to the arbitration that was relevant to those principles or methodologies.

Note: Confidentiality issues are dealt with in subsections (5) and (6).



*Report may include other matters*

- (4) The report may include any other matter that the Commission considers relevant.

*Confidentiality*

- (5) The Commission must not include in the report any information the Commission decided not to give to a party to the arbitration under section 44ZL (as applied in relation to the arbitration by section 153ZEV).
- (6) Before publishing the report, the Commission must give each party to the arbitration a notice in writing:
- (a) specifying what the Commission is proposing to publish; and
  - (b) inviting the party to make a written submission to the Commission within 14 days after the notice is given identifying any information the party considers should not be published because of its confidential commercial nature.
- (7) The Commission must have regard to any submission so made in deciding what to publish. It may have regard to any other matter it considers relevant.

*Legislation Act 2003*

- (8) A report prepared under subsection (1) is not a legislative instrument.

**153ZEU Commission may terminate arbitration in certain cases**

- (1) The Commission must terminate the arbitration of an access dispute (without making a final determination) if paragraphs (a), (b) and (c) of the definition of declared CS service no longer apply to the CS service.
- (2) The Commission may at any time terminate the arbitration of an access dispute (without making a final determination) if it thinks that:
- (a) the notification of the access dispute was vexatious; or
  - (b) the subject matter of the access dispute is trivial, misconceived or lacking in substance; or

- (c) the party who notified the access dispute has not engaged in negotiations (including negotiations under Division 3) in good faith; or
  - (d) the negotiation under Division 3 that led to the notification of the access dispute is insufficiently relevant to the matters that a final determination is likely to deal with; or
  - (e) access to the CS service should continue to be governed by an existing contract between some or all of the parties to the arbitration.
- (3) In addition, if the dispute is about varying an existing determination, the Commission may terminate the arbitration if it thinks there is no sufficient reason why the previous determination should not continue to have effect in its present form.

## **Division 6—Procedure in arbitration**

### **153ZEV Subdivision D of Division 3 of Part IIIA to apply**

- (1) The following provisions apply in relation to an arbitration of an access dispute under this Part as if they were provisions of this Division:
  - (a) Subdivision D of Division 3 of Part IIIA;
  - (b) regulations made for the purposes of provisions in that Subdivision.
- (2) For the purposes of subsection (1):
  - (a) treat an arbitration of an access dispute under this Part as an arbitration of an access dispute under Part IIIA; and
  - (b) treat any reference in that Subdivision or in those regulations to:
    - (i) a provision in that Subdivision or those regulations as a reference to a provision in that Subdivision or those regulations as they apply because of this section; and
    - (ii) a third party as a reference to an access seeker; and
  - (b) treat the reference in subsection 44ZG(3) to any other provision of this Part as a reference to any other provision of that Subdivision or Part XICB.

- (3) The regulations may modify the provisions mentioned in paragraph (1)(b) in their application under subsection (1) in relation to an arbitration of an access dispute under this Part.
- (4) If the Commission holds a joint arbitration hearing in respect of 2 or more access disputes under section 44ZNA (as applied by subsection (1)), the Commission may make a single determination that covers all of the disputes.

**153ZEW Commission's powers if information not provided in negotiations**

*Use in arbitration of information requested but not provided in negotiations*

- (1) If:
  - (a) a party to the arbitration of an access dispute seeks to include certain information in its case; and
  - (b) in the negotiation under Division 3 that led to the notification of the access dispute, the information was the subject of a request under section 153ZEK; and
  - (c) the party, or a person related to the party, was the responding party (within the meaning of subsection 153ZEK(1)) to the request; and
  - (d) the responding party did not ensure that the requirements in subsection 153ZEK(3) were satisfied in respect of the request;the party must seek the Commission's permission in writing to include the information in its case.
- (2) In determining whether to grant permission under subsection (1), the Commission must have regard to:
  - (a) the desirability of the parties to the negotiation complying with the requirements in section 153ZEK; and
  - (b) whether the responding party was given a reasonable opportunity to ensure that the requirements in subsection 153ZEK(3) were satisfied in respect of the request before the access dispute was notified.

*Commission's powers generally*

- (3) If the Commission is satisfied that a party to the arbitration of an access dispute has failed to provide information in accordance with section 153ZEK in the negotiation under Division 3 that led to the notification of the access dispute, the Commission may do any of the following in the arbitration:
  - (a) direct that the party is not entitled to rely on specified information or materials;
  - (b) draw such adverse inferences from the failure as the circumstances justify;
  - (c) for the purposes of making a determination, not have regard to information that the party in the negotiation failed to provide in accordance with section 153ZEK.

**153ZEX Sharing information with and requesting advice from ASIC and Reserve Bank**

- (1) The Commission may do any of the following:
  - (a) notify ASIC or the Reserve Bank of Australia that an access dispute exists;
  - (b) request advice from ASIC or the Reserve Bank of Australia relating to the arbitration of an access dispute;
  - (c) give information relating to an access dispute to ASIC or the Reserve Bank of Australia for the purposes of a notification or request under paragraph (a) or (b).
- (2) To avoid doubt, paragraph (1)(c) applies to confidential commercial information that the Commission thinks should not be given to the other parties to the arbitration under section 44ZL (as applied in relation to the arbitration by section 153ZEV).
- (3) ASIC and the Reserve Bank of Australia may give advice to the Commission relating to the arbitration of an access dispute.

**Division 7—Effect of determinations**

**153ZEY Operation of final determinations**

- (1) Unless otherwise specified, a final determination of an access dispute has effect 21 days after the determination is made.

*Backdating*

- (2) Any or all of the provisions of the final determination may be expressed to apply from a specified day that is earlier than the day on which it takes effect under subsection (1).

Example: The Commission makes a final determination on 1 August. It takes effect under subsection (1) on 22 August, but it is expressed to apply from 1 July.

- (3) The specified day must not be earlier than the day on which the notification of negotiations under section 153ZEH was given that led to the notification of the access dispute under section 153ZEM.
- (4) However, the specified day cannot be a day on which the access seeker did not have access to the CS service.

*Operation of interim determination*

- (5) If a provision of a final determination is expressed to apply from a day when an interim determination was in effect, the provision of the final determination prevails over the interim determination to the extent set out in the final determination.

*Interest*

- (6) If:
- (a) a provision of a final determination is covered by subsection (2); and
  - (b) the provision requires a party to the determination (the *first party*) to pay money to another party;
- the determination may require the first party to pay interest to the other party, at the rate specified in the determination, on the whole or a part of the money, for the whole or a part of the period:
- (c) beginning on the day specified under subsection (2); and
  - (d) ending on the day on which the determination takes effect under subsection (1).

**153ZEZ Effect and duration of interim determinations**

- (1) An interim determination made in the arbitration of an access dispute takes effect on the day specified in the determination.

- (2) Unless sooner revoked, such an interim determination continues in effect until the earliest of the following:
- (a) the notification of the access dispute is withdrawn under section 153ZEN;
  - (b) the arbitration is terminated under section 153ZEU;
  - (c) a final determination relating to the access dispute takes effect.

Note: A backdated final determination may prevail over an interim determination: see subsection 153ZEY(5).

## **Division 8—Variation and revocation of determinations**

### **153ZFA Variation and revocation of determinations**

- (1) The Commission may, if satisfied it is appropriate to do so, by written instrument vary or revoke a determination:
- (a) on its own initiative; or
  - (b) on the application of any party to the determination.
- (2) Sections 153ZEQ and 153ZER apply to the making of a variation of a final determination as if:
- (a) an access dispute arising out of the final determination had been notified when the application was made to the Commission for the variation of the determination; and
  - (b) the variation were the making of a final determination in the terms of the varied determination.
- (3) Before making a variation, the Commission may give a draft variation to the parties.
- (4) When the Commission varies or revokes a determination, it must give the parties to the determination its reasons for doing so.
- (5) A variation or revocation is not a legislative instrument.

## **Division 9—Enforcement and remedies**

### **153ZFB Prohibition on hindering access to declared services**

- (1) The provider or a user of a CS service to which an access seeker has access under a determination, or a body corporate related to the provider or a user of the CS service, must not engage in conduct for the purpose of preventing or hindering the access seeker's access to the CS service under the determination.
- (2) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or from other relevant circumstances. This subsection does not limit the manner in which the purpose of a person may be established for the purposes of subsection (1).
- (3) In this section, a **user** of a CS service includes a person who has a right to use the CS service.

### **153ZFC Division 7 of Part IIIA to apply**

- (1) Division 7 of Part IIIA applies in relation to a determination under this Part as if they were provisions of this Division.
- (2) For the purposes of subsection (1), treat:
  - (a) a reference in that Division to:
    - (i) a determination as a reference to a determination made under this Part; and
    - (ii) section 44ZZ as a reference to section 153ZFB; and
  - (b) the reference in subsection 44ZZE(3) to Divisions 2 and 3 as a reference to this Part (other than this section); and
  - (c) section 44ZZJ as having been omitted; and
  - (d) any reference in Division 7 of Part IIIA to a provision in that Division as a reference to the provision as it applies because of this section.

## **Division 10—Miscellaneous**

### **153ZFD Register of determinations**

- (1) The Commission must maintain a public register that specifies the following information for each determination:
  - (a) the names of the parties to the determination;
  - (b) the CS service to which the determination relates;
  - (c) the date on which the determination was made.
- (2) The regulations may make provision about the inspection of the public register (including provision about fees).

### **153ZFE Provisions of Division 8 of Part IIIA to apply**

- (1) The following provisions apply in relation to a determination under this Part as if they were provisions of this Division:
  - (a) section 44ZZN;
  - (b) section 44ZZNA;
  - (c) section 44ZZO.
- (2) For the purposes of subsection (1), the provisions apply:
  - (a) in relation to a determination under this Part in the same way as they apply in relation to a determination made under Part IIIA; and
  - (b) in relation to this Part in the same way as they apply in relation to Part IIIA.



## **Part 3—Contingent amendments**

### *Competition and Consumer Act 2010*

**23 Section 153ZEB (definition of *Australian CS facility licence*)**

Omit “section 761A of”.

**24 Section 153ZEB (definition of *CS facility*)**

Omit “section 761A of”.

**25 Section 153ZEB (definition of *CS facility licensee*)**

Omit “section 761A of”.

## Schedule 4—Improving the flexibility of the First Home Super Saver Scheme

### *Income Tax Assessment Act 1997*

#### **1 Subparagraph 306-10(c)(iii)**

Omit “and”.

#### **2 At the end of paragraph 306-10(c)**

Add:

- (iv) it is a payment under subsection 131-80(1) or (3) in Schedule 1 to the *Taxation Administration Act 1953*; and

#### **3 At the end of section 306-10**

Add:

Note 3: Subparagraph (c)(iv) relates to payments when an entitlement to a credit ceases for a release authority relating to an FHSS determination.

#### **4 Subsection 307-5(1) (at the end of the table)**

Add:

- |   |   |  |
|---|---|--|
| 9 | <i>repayment when an entitlement to a credit ceases for a release authority relating to an FHSS determination</i> | A payment relating to you under subsection 131-80(1) or (3) in Schedule 1 to the <i>Taxation Administration Act 1953</i> . |
|---|---|--|

#### **5 Paragraph 307-120(2)(a)**

Omit “or (e)”, substitute “, (e) or (f)”.

#### **6 At the end of subsection 307-120(2)**

Add:

; or (f) if the benefit is a payment by the Commissioner under subsection 131-80(1) or (3) in Schedule 1 to the *Taxation Administration Act 1953*—section 307-143.

## **7 After section 307-142**

Insert:

### **307-143 Components of a superannuation benefit that is a repayment when an entitlement to a credit ceases for a release authority relating to an FHSS determination**

*Preliminary*

- (1) This section explains how to work out the \*tax free component, and the \*taxable component, of your \*superannuation benefit that:
- (a) is a repayment by the Commissioner under subsection 131-80(1) in Schedule 1 to the *Taxation Administration Act 1953* of an amount (the **released amount**) paid to the Commissioner in relation to you; or
  - (b) is a payment by the Commissioner under subsection 131-80(3) in Schedule 1 to the *Taxation Administration Act 1953* of an equivalent amount to an amount (the **released amount**) paid to the Commissioner in relation to you.

*Tax free component*

- (2) The \*tax free component of your \*superannuation benefit is equal to the total amount that the released amount reduced the tax free components of your \*superannuation interests.

*Taxable component*

- (3) The \*taxable component of your \*superannuation benefit is equal to the total amount that the released amount reduced the taxable components of your \*superannuation interests.

## **8 Section 313-10**

Repeal the section, substitute:

### 313-10 Application of this Division

This Division applies to you for one or more amounts (the *FHSS released amounts*) if:

- (a) those amounts are paid in response to a release authority issued under Division 131 in Schedule 1 to the *Taxation Administration Act 1953* in relation to a \*first home super saver determination made in relation to you; and
- (b) your entitlements under section 131-65 in that Schedule to credits relating to those amounts have not ceased under subsection 131-30(4) or 138-13(3) in that Schedule.

### 9 Section 313-15

Omit:

An amount is included in your assessable income, and you are entitled to a tax offset, if an amount is paid in response to a release authority issued in respect of you.

substitute:

An amount is included in your assessable income, and you are entitled to a tax offset, if:

- (a) an amount is paid in response to a release authority issued in respect of you; and
- (b) your entitlement to a credit relating to that amount has not ceased.

### 10 Paragraphs 313-35(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) you make a valid request (the *current request*) under section 131-5 in Schedule 1 to the *Taxation Administration Act 1953* for a release authority in relation to that determination; and
- (ba) that current request is your first such request, or one of the following subparagraphs applies for each of your previous valid requests for such a release authority:
  - (i) you have withdrawn the request;

- (ii) the Commissioner has revoked the release authority issued in relation to the request (whether or not the release authority had previously been varied);
  - (iii) after one or more amendments of the request, you have withdrawn the latest of those amended requests;
  - (iv) the Commissioner has revoked the release authority issued in relation to the latest of one or more amendments of the request (whether or not the release authority had previously been varied); and
- (c) you enter into a contract to purchase or construct a \*CGT asset that is a \*residential premises in Australia within the period:
- (i) beginning 90 days before the day you make the first of the valid requests referred to in paragraph (ba); and
  - (ii) ending 12 months (or if extended under subsection (2), that longer period) after the day you make the current request; and

**11 Paragraph 313-35(1)(d)**

Omit “valid request”, substitute “current request”.

**12 Subsection 313-40(2)**

Omit “28 days”, substitute “the 90-day period”.

**13 Subsection 313-40(2)**

After “after”, insert “the day”.

***Taxation Administration Act 1953***

**14 Subsection 131-5(6) in Schedule 1**

Repeal the subsection, substitute:

*Most requests are irrevocable*

- (6) Subject to section 131-12 (about requests relating to FHSS determinations), a request under this section is irrevocable.

**15 After section 131-10 in Schedule 1**

Insert:

**131-12 Withdrawing or amending your request for a release authority relating to an FHSS determination**

- (1) You may, by notifying the Commissioner in the \*approved form, withdraw or amend your valid request made under section 131-5 if:
  - (a) your request relates to a \*first home super saver determination given to you; and
  - (b) in the case of amending your request—you satisfy paragraphs 138-10(2)(a) and (b); and
  - (c) the Commissioner has not already issued a release authority in relation to your request.
- (2) Your amended request is treated as a valid request under section 131-5 if it complies with subsection 131-5(2) and paragraphs 131-5(3)(a) and (c).
- (3) Withdrawing your request does not prevent you from making a later request under section 131-5 in relation to the \*first home super saver determination.

**16 Section 131-30 in Schedule 1**

Repeal the section, substitute:

**131-30 Varying or revoking a release authority**

*Release authority not relating to an FHSS determination*

- (1) The Commissioner may decide to vary or revoke a release authority issued:
  - (a) under section 131-15; and
  - (b) in relation to a determination, or assessment, mentioned in paragraph 131-5(1)(a), (b) or (c) and given to you;at any time before the Commissioner is given a notice under section 131-50 relating to the release authority.

*Release authority relating to an FHSS determination*

- (2) For a release authority issued under section 131-15 in relation to a \*first home super saver determination given to you, the Commissioner may decide to:
- (a) vary the release authority if:
    - (i) the varied release authority would be consistent with paragraph 131-5(3)(a); and
    - (ii) you satisfy paragraphs 138-10(2)(a) and (b); or
  - (b) revoke the release authority;
- at any time before the Commissioner begins treating, under Division 3 of Part IIB, any credit to which you have become entitled under section 131-65 in relation to the release authority.
- (3) The Commissioner may make a decision under subsection (2):
- (a) on the Commissioner's own initiative; or
  - (b) on application by you to the Commissioner in the \*approved form.
- (4) If a release authority is varied or revoked under subsection (2) at a particular time, then any entitlement under section 131-65 you had to a credit relating to the release authority ceases at that time.
- (5) The revocation of a release authority under subsection (2) does not prevent you from making a later request under section 131-5 in relation to the same \*first home super saver determination.

*Reissuing varied release authorities*

- (6) If the Commissioner varies a release authority under this section at a particular time, then:
- (a) at that time, the release authority (as issued before the variation) ceases to be in force; and
  - (b) the Commissioner must reissue the release authority (as varied) under section 131-15.

*Review*

- (7) If you are dissatisfied with a decision under subsection (2) by the Commissioner in relation to you:
- (a) to vary or revoke a release authority; or

(b) not to vary or revoke a release authority;  
you may object against it in the manner set out in Part IVC of this Act.

## **17 At the end of Subdivision 131-A in Schedule 1**

Add:

### **Repayments if your entitlement to a credit ceases for a release authority relating to an FHSS determination**

#### **131-80 Repayments if your entitlement to a credit ceases for a release authority relating to an FHSS determination**

*Repaying the superannuation provider if it still holds a superannuation interest for you*

- (1) If:
- (a) a \*superannuation provider pays an amount (the **released amount**) to the Commissioner under section 131-35 or 131-40 in relation to you; and
  - (b) your entitlement under section 131-65 to a credit relating to the released amount ceases under subsection 131-30(4) or 138-13(3); and
  - (c) the Commissioner reasonably believes that the provider still holds a \*superannuation interest for you; and
  - (d) the Commissioner reasonably believes that, were the released amount to be repaid to the provider, the provider:
    - (i) could allocate the repayment (the **repaid amount**) to that superannuation interest; and
    - (ii) could later pay an amount equal to the repaid amount in response to a release authority issued under this Division in relation to a later \*first home super saver determination given to you;
- the Commissioner must repay the released amount to the provider.
- (2) The Commissioner must make the repayment within 30 \*business days after the day the Commissioner starts holding the reasonable belief necessary to satisfy both paragraphs (1)(c) and (d).



*What happens if the original provider cannot be repaid*

- (3) However, if the Commissioner cannot repay the released amount under subsection (1), the Commissioner must only pay an equivalent amount to the released amount if an item of the following table applies.

<b>When the Commissioner must pay the equivalent amount</b>		
<b>Item</b>	<b>If the Commissioner reasonably believes that:</b>	<b>then the Commissioner must pay the equivalent amount to:</b>
1	<p>(a) another release authority has been issued under section 131-15:</p> <ul style="list-style-type: none"> <li>(i) to another *superannuation provider in relation to you; and</li> <li>(ii) in relation to a *first home super saver determination (an <b><i>FHSS determination</i></b>) given to you; and</li> </ul> <p>(b) the other provider still holds a *superannuation interest for you; and</p> <p>(c) were the equivalent amount to be paid to the other provider, the other provider:</p> <ul style="list-style-type: none"> <li>(i) could allocate the equivalent amount to that superannuation interest; and</li> <li>(ii) could later pay an amount equal to the equivalent amount in response to a release authority issued under this Division in relation to a later FHSS determination given to you</li> </ul>	the other *superannuation provider.
2	<p>(a) another *superannuation provider holds a *superannuation interest for you; and</p> <p>(b) you or your *legal personal representative has notified the Commissioner of this in the * approved form</p>	the other *superannuation provider.
3	(a) you satisfy a condition of release, with a nil cashing restriction, of benefits specified in a standard referred to in	you or your *legal personal representative (as applicable).

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**When the Commissioner must pay the equivalent amount**

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<b>Item</b>	<b>If the Commissioner reasonably believes that:</b>	<b>then the Commissioner must pay the equivalent amount to:</b>
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paragraph 31(2)(h) of the *Superannuation Industry (Supervision) Act 1993*; and

- (b) you or your \*legal personal representative has notified the Commissioner of this in the \*approved form
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- (4) The Commissioner must pay the equivalent amount:
- (a) in accordance with the item of the table that is the first to so apply; and
  - (b) within 30 \*business days after the day that item starts to so apply.

**18 Before subsection 138-10(1) in Schedule 1**

Insert:

*First home super saver determination*

**19 Before subsection 138-10(2) in Schedule 1**

Insert:

*Requesting a first home super saver determination*

**20 Subparagraph 138-10(2)(a)(i) in Schedule 1**

Repeal the subparagraph, substitute:

- (i) a legal interest in an estate in fee simple in real property in Australia; or

**21 Subparagraph 138-10(2)(a)(ii) in Schedule 1**

Before “a lease of”, insert “a legal interest in”.

**22 Paragraph 138-10(2)(c) in Schedule 1**

Repeal the paragraph, substitute:

- (c) subsection (2C) applies for you.
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## **23 After subsection 138-10(2B) in Schedule 1**

Insert:

- (2C) This subsection applies for you if:
- (a) you have not previously made a valid request for a release authority under Division 131 in relation to a \*first home super saver determination made in relation to you; or
  - (b) one of the following subparagraphs applies for each of your previous valid requests for such a release authority:
    - (i) you have withdrawn the request;
    - (ii) the Commissioner has revoked the release authority issued in relation to the request (whether or not the release authority had previously been varied);
    - (iii) after one or more amendments of the request, you have withdrawn the latest of those amended requests;
    - (iv) the Commissioner has revoked the release authority issued in relation to the latest of one or more amendments of the request (whether or not the release authority had previously been varied).

*Making a first home super saver determination etc.*

## **24 Subsection 138-10(4) in Schedule 1**

Repeal the subsection.

## **25 After section 138-10 in Schedule 1**

Insert:

### **138-12 Withdrawing or amending your request**

- (1) You may, by notifying the Commissioner in the \*approved form, withdraw or amend your valid request made under section 138-10 if:
- (a) in the case of amending your request—you satisfy paragraphs 138-10(2)(a) to (c); and
  - (b) the Commissioner has not already made a \*first home super saver determination in relation to your request.

- (2) Your amended request is treated as a valid request under section 138-10.
- (3) Withdrawing your request does not prevent you from making a later request under section 138-10.

**138-13 Amending or revoking a first home super saver determination**

- (1) The Commissioner may decide to:
  - (a) amend a \*first home super saver determination made in relation to you if you satisfy paragraphs 138-10(2)(a) to (c); or
  - (b) revoke a first home super saver determination made in relation to you;at any time before the Commissioner begins treating, under Division 3 of Part IIB, any credit to which you have become entitled under section 131-65 in relation to a release authority relating to the determination.

Note: Like other first home super saver determinations, an amended determination will need to comply with Subdivision 138-B.

- (2) The Commissioner may make a decision under subsection (1):
  - (a) on the Commissioner's own initiative; or
  - (b) on application by you to the Commissioner in the \*approved form.
- (3) If a \*first home super saver determination is amended or revoked under subsection (1) at a particular time, then at that time:
  - (a) each of the following ceases to be valid or in force:
    - (i) any request under section 131-5 for a release authority in relation to that determination;
    - (ii) any release authority issued in relation to such a request; and
  - (b) any entitlement under section 131-65 you had to a credit relating to such a request ceases.

Note: Paragraphs (a) and (b) apply to a request or release authority whether or not it has been amended or varied.

- (4) Notice of an amended determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice. For the purposes of paragraph 131-5(3)(c), the Commissioner is treated as issuing the amended determination at the time this notice is given.

## **26 After paragraph 138-15(b) in Schedule 1**

Insert:

- or (c) a decision the Commissioner makes under subsection 138-13(1):
- (i) to amend or revoke a determination; or
  - (ii) not to amend or revoke a determination;

## **27 Subsection 355-65(3) in Schedule 1 (after table item 10)**

Insert:

- 10A      a \*superannuation provider                      is for the purpose of complying with section 131-80 in this Schedule.

## **28 Application of amendments etc.**

- (1) The amendments made by this Schedule apply in relation to first home super saver determinations made, or to be made, on or after 1 July 2018.
- (2) However, the amendments made by this Schedule of the following provisions apply in relation to first home super saver determinations made, or to be made, on or after the commencement of this Schedule:
  - (a) paragraph 138-10(2)(a) in Schedule 1 to the *Taxation Administration Act 1953*;
  - (b) subsection 313-40(2) of the *Income Tax Assessment Act 1997*.
- (3) Subitem (4) applies for the purposes of subsection 313-35(1) of the *Income Tax Assessment Act 1997*, if the first home super saver determination mentioned in paragraph (a) of that subsection is made before the commencement of this Schedule.
- (4) Treat the reference in subparagraph 313-35(1)(c)(i) of that Act (as inserted by this Schedule) to “90 days” as instead being a reference to “14 days”.

## 29 Transitional—variations or revocations of release authorities before commencement

A variation of a release authority, or a revocation of a release authority, as the result of a decision made:

- (a) under section 131-30 in Schedule 1 to the *Taxation Administration Act 1953*; and
- (b) before the commencement of this Schedule;

continues in force (and may be dealt with) on or after that commencement as if that decision had been made under subsection 131-30(1) in that Schedule (as amended by this Schedule).

## 30 Transitional—assisting individuals who have unsuccessfully attempted to obtain FHSS released amounts

(1) This item applies if:

- (a) a first home super saver determination (the *original determination*) was made in relation to you during the period:
  - (i) starting on 1 July 2018; and
  - (ii) ending immediately before the commencement of this Schedule; and
- (b) after the original determination was made, you begin holding an interest that:
  - (i) relates to real property or land; and
  - (ii) is an interest of a kind mentioned in paragraph 138-10(2)(a) in Schedule 1 to the *Taxation Administration Act 1953* (as amended by this Schedule); and
- (c) during the 3-year period starting at the commencement of this Schedule, you take one or more of the following actions:
  - (i) apply, under subsection 138-13(2) in Schedule 1 to the *Taxation Administration Act 1953*, to amend the original determination;
  - (ii) amend, under subsection 131-12(1) in that Schedule, your valid request relating to the original determination;

- (iii) apply, under subsection 131-30(3) in that Schedule, to vary a release authority issued in relation to the original determination; and
      - (d) when you take such an action, the Commissioner has not begun treating, under Division 3 of Part IIB of the *Taxation Administration Act 1953*, any credit to which you have become entitled:
        - (i) under section 131-65 in Schedule 1 to that Act; and
        - (ii) in relation to a release authority relating to any first home super saver determination made in relation to you.
  - (2) For the purposes of an action covered by paragraph (1)(c), each of the following provisions in Schedule 1 to the *Taxation Administration Act 1953*:
    - (a) paragraph 138-13(1)(a);
    - (b) paragraph 131-12(1)(b);
    - (c) subparagraph 131-30(2)(a)(ii);applies to you as if you satisfy paragraph 138-10(2)(a) in that Schedule.
- Note: This means the fact that you now hold that interest relating to real property or land does not prevent you from seeking to:
- (a) amend the original determination; or
  - (b) amend your valid request for a release authority relating to the original determination; or
  - (c) vary a release authority issued in relation to the original determination.
- (3) However, any amendment of the original determination as a result of this item:
    - (a) must not state an FHSS maximum release amount that exceeds what that amount could have been at the time the original determination was made; and
    - (b) must reflect the limits that were in paragraphs 138-35(1)(a) and (b) in Schedule 1 to the *Taxation Administration Act 1953* at the time the original determination was made.
  - (4) Subdivisions 313-C to 313-E of the *Income Tax Assessment Act 1997* do not apply to you in circumstances relating to, or resulting from, (whether directly or indirectly) an action covered by paragraph (1)(c) of this item.

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*[Minister's second reading speech made in—  
House of Representatives on 14 June 2023  
Senate on 2 August 2023]*

*(75/23)*